

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Langfitt Shipping Corp. :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation Tax :
under Article 9A of the Tax Law for the Years :
1979-1981.

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 23rd day of May, 1985, he served the within notice of decision by certified mail upon Langfitt Shipping Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Langfitt Shipping Corp.
1 Chase Manhattan Plaza
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
23rd day of May, 1985.

David Parchuck

James D. Heyland

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Langfitt Shipping Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation Tax :
under Article 9A of the Tax Law for the Years :
1979-1981.

State of New York :
ss.:
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 23rd day of May, 1985, he served the within notice of decision by certified mail upon Aron M. Pick, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Aron M. Pick
Langfitt Shipping Corporation
1 Chase Manhattan Plaza
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
23rd day of May, 1985.

David Parchuck

James W. Fitzgerald
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 23, 1985

Langfitt Shipping Corp.
1 Chase Manhattan Plaza
New York, NY 10005

Gentlemen:

Please take notice of the decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Aron M. Pick
Langfitt Shipping Corporation
1 Chase Manhattan Plaza
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LANGFITT SHIPPING CORPORATION	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business Corporations :	:	
under Article 9-A of the Tax Law for the Years	:	
1979, 1980 and 1981.	:	

Petitioner, Langfitt Shipping Corporation, One Chase Manhattan Plaza, New York, New York 10005, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1979, 1980 and 1981 (File No. 44186).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 31, 1984 at 1:15 P.M., with all briefs submitted by January 24, 1985. Petitioner appeared by Aron M. Pick, Esq. The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner was a corporation formed for or principally engaged in the conduct of a transportation business, subject to the taxes imposed under sections 183 and 184 of the Tax Law, and thus exempt from taxation under Article 9-A.

FINDINGS OF FACT

1. For each of the years 1979, 1980 and 1981, petitioner, Langfitt Shipping Corporation, filed a Franchise Tax Report on Capital Stock and Gross

Earnings under Tax Law Article 9, sections 183 and 184, and paid the minimum tax of \$75.00.

2. The Audit Division determined that petitioner should properly be classified and taxed as an Article 9-A business corporation. On March 11, 1983, it accordingly issued a Notice of Deficiency against petitioner for each of the years under consideration, asserting the minimum tax due under Article 9-A of \$250.00, plus interest, and affording petitioner credit for the tax previously paid.

3. Petitioner, a subsidiary of Seatrain Lines, Inc. ("Seatrain"), was organized under section 402 of the New York Business Corporation Law in 1968 for a variety of purposes, including, among others:

(a) to engage in the operation and control of ships and vessels for the carriage of passengers and freight;

(b) to construct, hire, purchase and work steamship and other vessels and to establish and maintain lines of steamships or other vessels;

(c) to own, charter, hire and operate tankers, tugboats, lighters, barges, steamers, vessels and sail and power boats of any kind for the transportation of goods; to own, rent, use and operate motor vehicles and to transact a general warehousing, delivery express and freight business;

(d) to purchase, lease or otherwise acquire, own, maintain, operate and sell or otherwise dispose of tankers, tugs, barges, ships, boats and vessels and to repair, alter, load on commission, let out for hire or otherwise deal with the same;

(e) to act as ship and marine and ship chartering agents and brokers, both for its own account and for the account of others;

(f) to purchase, manufacture, receive, lease or in any manner acquire, own, use, maintain, import, export, sell, lease and generally to trade and deal in and with raw materials, machinery, equipment, parts, supplies and personal property of every kind and to engage and participate in any mercantile, manufacturing or trading business; and

(g) to purchase, lease or otherwise acquire and to manage, sell, mortgage or otherwise deal in and with real property.

4. The specific business reason for petitioner's formation was to acquire and operate a tanker for the worldwide transportation of oil. To this end, petitioner entered into a contract with Seatrain Shipbuilding Corporation, another Seatrain subsidiary, to build the tanker. In 1973, before the tanker was completed, petitioner determined that due to drastic changes occurring in the tanker business in general, operation of the tanker would not be profitable. Consequently, in that year, petitioner transferred its interest in the uncompleted vessel to General Electric Credit Corporation and thereafter became inactive, having no assets or employees.

CONCLUSIONS OF LAW

A. That for the privilege of exercising its corporate franchise, of doing business, of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, every domestic or foreign corporation (except those corporations subject to tax under sections 183 through 186 and such other corporations as are specified in section 209.4) must pay an annual franchise tax to this state (Article 9-A, section 209.1). Sections 183 and 184 of Article 9 impose a franchise tax and an additional franchise tax, respectively, upon corporations and associations formed for or principally engaged in the conduct of aviation,

railroad, canal, steamboat, ferry, express, navigation, pipe line, transfer, baggage express, omnibus, trucking, taxicab, telegraph, telephone, palace car or sleeping car business or formed for or principally engaged in the conduct of two or more of such businesses, and other domestic corporations or associations principally engaged in the conduct of a transportation or transmission business.

B. That whether a corporation is properly classified and held subject to taxation under Article 9 or under Article 9-A is to be determined from an examination of the nature of its business activities.

"[I]t has firmly been established that classification for franchise tax purposes is to be determined by the nature of [the corporation's] business and that the purposes for which the corporation was organized are immaterial. This rule with respect to classification for franchise tax purposes applies especially to corporations organized under the general business corporation laws which have within their certificates of incorporation a wide variety of chartered powers." Matter of McAllister Bros., Inc. v. Bates, 272 App. Div. 511, 517 (3d Dept. 1947).


It is undisputed that the only business enterprise petitioner ever pursued was to enter into a contract for the construction of an oil tanker, and that petitioner transferred its rights under the contract before completion and delivery of the vessel. This limited activity did not constitute the conduct of a transportation business. The Audit Division's reclassification of petitioner as an Article 9-A business corporation was thus warranted.


C. That the petition of Langfitt Shipping Corporation is hereby denied, and the notices of deficiency issued on March 11, 1983 are sustained.

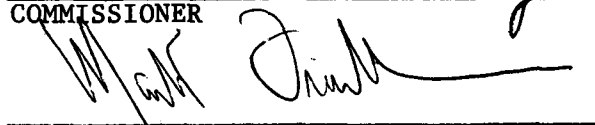
DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1985


PRESIDENT


COMMISSIONER


COMMISSIONER